

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 416 / 2008Wednesday, this the 15th day of July 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

M.P.Sasidharan Nair,
(Constable/RPF/SNP),
working as Jamadar Peon,
DRM's Office, Southern Railway,
Trivandrum.Applicant

(By Advocate Mr M.P.Varkey)

v.

1. Union of India represented by
the Chairman,
Railway Board & Ex Officio
Principal Secretary to Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. Chief Personnel Officer,
Southern Railway,
Chennai-600 003.
3. Chief Security commissioner(RPF),
Southern Railway,
Chennai-600 003.
4. Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum-695 014.
5. Divisional Security Commissioner (RPF),
Southern Railway,
Trivandrum-695 014.Respondents

(By Advocate Mr Thomas Mathew Nellimoottil)

This application having been finally heard on 24.6.2009, the Tribunal on 15.7.2009 delivered the following:

ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The grievance of the applicant in this case is that the respondents have discriminated him in Government employment as against the provisions contained in Section 47(2) of the Persons with Disabilities (Equal Opportunities) Act 1995, ("1995 Act" for short) which is reproduced as under:-

47 Non-discrimination in Government employment-

(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits.

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability.

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

2. The brief facts of the case are: the applicant was initially appointed as Rakshak (now redesignated as Constable) in South Eastern Railway with effect from 2.12.1971 in the then existing scale Rs.70-75. Later on, he was transferred to Southern Railway with effect from 1.3.1982 and posted to Trivandrum Division. While working there in the revised scale of Rs.825-1200/2750-4400, he was medically unfitted in Class B-1 and fitted in Classes C-1 and C-2 (with glass) with effect from 22.5.1996. According to him, when the Persons with Disabilities (Equal Opportunities) Act 1995. (Act of 1995 for short) came into force with effect from 7.2.1996, the respondents should have granted him all the benefits as provided for, under Section 47 of the said Act referred to above. On the contrary, he was compulsorily placed on leave from 22.5.1996 and later he was absorbed as Peon with effect from 18.11.1996 in the scale Rs.750-940/2550-3200 which was lower than that of the Constable on that date i.e. Rs.825-



1200/2750-4400. He was then promoted as Jamadar in the scale of Rs.2610-3520 with effect from 1.10.1997. However, after several representations, the respondents placed him on a supernumerary post of Constable in the scale of Rs.2750-4400 with retrospective effect from 22.5.1996 vide Annexure A-1 memorandum dated 11.12.2006. However, when the scale of pay of Constable in Railway Protection Force was revised, vide the Annexure A-2 Railway Board's letter dated 30.6.2000 with effect from 10.10.1997, the applicant was not given the benefit of the said revision. Again, when the Railway Board, vide letter dated 14.9.2006, made the similarly placed persons eligible for arrears of ration money and washing allowance with effect from 22.5.1996, the same was also denied to him. According to him, all the persons from Shri S.Gangadharan mentioned at SI.No.2 in the Annexure A-4 letter dated 14.2.2008 are junior to him and when supernumerary posts have been created to accommodate all the 13 medically decategorised RPF staff mentioned therein, the respondents have not included his name. His grievance is that he is still being treated only as a Peon for all purposes and denied pay and allowances of a Constable, promotion to supernumerary post of Head Constable in scale Rs.3200-4900, Assistant Sub Inspector in scale Rs.4000-6000 on par with his juniors or the 1st and 2nd financial upgradations to the said scales on completion of 12 years and 24 years respectively as given to his juniors in Annexure A-4 letter dated 14.2.2008. He has, therefore, made the Annexure A-5 representation dated 26.4.2007 for two financial upgradations in the scale of Rs.3200-4900 and Rs.4000-6000 with ration money and washing allowances.

3. Respondents in their reply have submitted that on medical decategorisation, the applicant was granted leave on average pay from 22.5.1996 to 2.11.1996 and leave on half average pay from 3.11.1996 to 17.11.1996 pending alternate appointment by the Screening Committee



constituted to assess the suitability of the medically decategorised employees, but later he was absorbed as a Peon in scale Rs.2550-3200 with effect from 6.8.1996. Thereafter, he was promoted to officiate as Jamadar Peon in scale Rs.2610-3540 with effect from 1.10.1996 on the basis of his seniority in the post in which he was absorbed. Again, considering his representation to grant him the benefit of Railway Board's letter dated 30.5.2005 he was deemed to be placed in supernumerary post in the RPF in scale Rs.2750-4400 with effect from 22.5.1996 itself, i.e. the date of medical decategorisation of the applicant. As regards the Annexure A-2 letter dated 30.6.2000 issued by the Railway Board was concerned, the respondents have submitted that it was applicable only to the regular staff in the RPF and since the applicant was already accommodated as Peon with effect from 6.8.1996 on alternate appointment on account of medical decategorisation, he was not entitled to the benefit thereof and he was promoted as Jamadar Peon with effect from 1.10.1997 in the cadre of peon and the applicant ceased to be a member of the RPF from 10.10.1997 and as such the instructions applicable to the RPF are not applicable to him. They have also submitted that medically decategorised employee placed on supernumerary post is not entitled to the benefits of financial upgradation under the ACPS as clarified by the Chief Personnel Officer, Southern Railway, Chennai dated 17.8.2007. Further, they have submitted that the applicant is no more a Peon and he is working on a supernumerary post in scale Rs.2750-4400 and waiting for alternate appointment in a post carrying scale of pay Rs.2750-4400.

4. In the rejoinder, the applicant has refuted the aforesaid contentions of the respondents. He has also produced Annexure A-9 letter dated 28.7.2008 issued during the pendency of this O.A by which he was posted as Records Sorter in scale Rs.2750-4400 i.e. in the same scale as that of Constable in RPF.



5. We have heard Shri M.P.Varkey, counsel for the applicant and Shri Thomas Mathew Nellimoottil, counsel for respondents. The question is making available all the benefits as contained in the provisions of Section 47 of the "1995 Act" as extracted in para 1 of this order. The said section stipulates that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service and no promotion shall be denied to a person merely on the ground of his disability. The applicant was medically decategorised with effect from 22.5.1996 when he was in the pre-revised scale Rs.2750-4400. In terms of the aforesaid provision of the "1995 Act" he was entitled to be placed in the supernumerary post carrying the same pay scale from the same date. However, the respondents wrongly placed him on leave on average pay with effect from 22.5.1996 to 2.11.1996 and thereafter leave on half average pay from 3.11.1996 to 17.11.1996. Then he was appointed to the lower level of a Peon in the scale Rs.2550-3200 with effect from 6.8.1996 and then promoted as Jamadar Peon in the scale Rs.2610-3540 from 1.10.1997. He was denied ration money and washing allowance as admissible to the other Constables of RPF who were in service. Even though the respondents have later placed him on supernumerary post in the scale of Rs.2750-4400 with effect from 22.5.1996 vide Annexure A-1 letter dated 11.12.2006 and further posted as Senior Record Sorter in the same scale vide the Annexure A-9 letter dated 29.7.2008, he was denied the revision in pay scale of the Constable in RPF from 2750-4400 to Rs.3050-4590 as granted by the Railway Board's letter dated 4.12.1997 (Annexure A-2). The respondents have also denied him promotion as Head Constable (SNP) in the scale of Rs.3200-4900 and as Assistant Sub Inspectors (SNP) in the said scale of Rs.4000-6000 on par with his juniors in the Annexure A-4 memorandum dated 14.2.2008. The denial of ACP benefits on the grounds that the applicant is no more in RPF and he was already placed on supernumerary post with effect from 22.5.1996 also cannot be justified. In our



considered view, the action of the respondents is not in accordance with Section 47 of the Act of 1995. The Apex Court in the judgment of **Kunal Singh v. Union of India & Anr** [(2003) 4 SCC 524] held as under:

"9 Chapter VI of the Act deals with employment relating to persons with disabilities, who are yet to secure employment. Section 47, which falls in Chapter VIII, deals with an employee who is already in service and acquires a disability during his service. It must be borne in mind that Section 2 of the Act has given distinct and different definitions of "disability" and "person with disability". It is well settled that in the same enactment if two distinct definitions are given defining a word/expression, they must be understood accordingly in terms of the definition. It must be remembered that a person does not acquire or suffer disability by choice. An employee, who acquires disability during his service, is sought to be protected under Section 47 of the Act specifically. Such employee, acquiring disability, if not protected, would not only suffer himself, but possibly all those who depend on him would also suffer. The very frame and contents of Section 47 clearly indicate its mandatory nature. The very opening part of the section reads "no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service." The section further provides that if an employee after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits, if it is not possible to adjust the employee against any post he will be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier. Added to this no promotion shall be denied to a person merely on the ground of his disability as is evident from sub-section (2) of Section 47. Section 47 contains a clear directive that the employer shall not dispense with or reduce in rank an employee who acquires a disability during the service. In construing a provision of a social beneficial enactment that too dealing with disabled persons intended to give them equal opportunities, protection of rights and full participation, the view that advances the object of the Act and serves its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Language of Section 47 is plain and certain casting statutory obligation on the employer to protect an employee acquiring disability during service."

Again the Apex Court in the case of **Bhagwan Dass and Anr v. Punjab State Electricity Board** [(2008) 1 SCC 579] held as under:

"20 In light of the discussions made above, the action of the Board in terminating the service of the disabled employee (Appellant 1) with effect from 21.3.1997 must be held to be bad and illegal. In view of the provisions of Section 47 of the Act, the appellant must be deemed to be in service and he would be entitled to all service benefits including annual increments and promotions, etc. till the date of his retirement. The amount of



terminal benefits paid to him should be adjusted against the amount of his salary from 22.3.1997 till date. If any balance remains, that should be adjusted in easy installments from his future salary. The appellant shall continue in service till his date of superannuation according to the service records. He should be reinstated and all due payments, after adjustment as directed, should be made to him within six weeks from the date of presentation of a copy the judgment before the Secretary of the Board."

This Tribunal also had the occasion to consider a similar case in O.A.200/2008 – **N.Chandralal v. Union of India and another** decided on 29.10.2008 wherein it was held as under:

5 We have heard Counsel for Applicant and the Counsel for Respondents. The Section 47(2) of the Act of 1995 is explicitly clear. According to the said provision, no promotion shall be denied to a person merely on the ground of disability. We also do not find any contradiction to the said provision in para 213A of Railway Establishment Manual referred to above. This is a clear case of denial of promotion on the ground of his disability in violation of the Rule 47(2) of the Act of 1995 and the similar provision contained in para 213A of the Railway Establishment Manual. The reason given by the Respondents that his name has already been taken out from the rolls of Assistant Loco Pilot from the date of his de-categorisation and he has not been fitted with an alternative employment are absolutely untenable and unjustifiable. The Applicant's counsel has rightly relied upon the judgments of the Apex Court in Kunal Singh's case (supra) and Bhagwan Das's case (supra). We, therefore, allow this OA and declare that the applicant is entitled to the scale of pay of Rs.4000-6000 on par with his juniors with effect from 29.6.2007. Consequently, we direct that the respondents shall promote the applicant to the aforesaid grade w.e.f. 29.6.2007 i.e. the date on which his juniors Shri G.Thomas, Shri Sunil Jose and others were promoted to the post of Sr. Assistant Loco Pilots in terms of the Annexure A 3 Office Order dated 29.6.2007. The Respondents shall issue necessary orders in this regard and the applicant shall also be paid the consequential arrears of salary and allowances within a period of two months from the date of receipt of copy of this order. There shall be no orders as to costs.

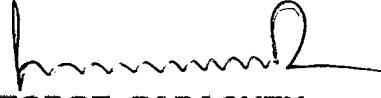
6. In view of the above position, we allow this O.A. Consequently we quash and set aside the Annexure A-6 letter as well as the order by which the applicant was placed compulsory on leave from 22.5.1996 to 5.8.1996 are contrary to Section 47 of the Act of 1995. The applicant is, therefore, declared entitled (i) to credit the leave for the aforesaid period back in his leave account (ii) to the revision of the scale of Rs.3050-4590 with arrears with effect from 10.10.1997



i.e. the date from which scale of pay of RPF constables have revised, (iii) to the ration money and the washing allowance which has been denied to him from 22.5.1991 with arrears and either to be promoted as Head Constable(SNP) in scale Rs.3200-4900 and as Assistant Sub Inspector (SNP) in scale Rs.4000-6000 or to be placed in the said scales under the ACP scheme on par with his juniors in the cadre of RPF Constables, with all attendant benefits and arrears of pay. In short, the applicant shall not be denied any of the service benefits including allowances, timely promotions/ACP benefits as entitled to an RPF Constable and treat him at par with his immediate junior in the RPF as on 22.5.1996 i.e. the date of his medical decategorisation. The respondents shall pass appropriate order granting such benefits including ration money with update arrears within a period of two months from the date of receipt of copy of this order. There shall be no order as to costs.



K NOORJEHAN
ADMINISTRATIVE MEMBER



GEORGE PARACKEN
JUDICIAL MEMBER

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